

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5256 of 1985

Date of decision: 10-9-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATUBHAI MANGALBHAI RATHOD

Versus

DEPUTY COLLECTOR

Appearance:

MR AJ PATEL for Petitioner
Ms. Siddhi Talati for Respondent No. 1
None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/09/97

ORAL JUDGEMENT

By this special civil application the petitioner has challenged the order annexure-H dated 18-9-94 of the Deputy Collector, Anand and order annexure-I dated 4-6-85 of the Secretary (Appeals), Revenue Department, Ahmedabad passed in Revision Application S.R.D.Con.No.258 of 1984 under the provisions of the Consolidation of Holdings and Prevention of Fragmentation Act, 1947.

2. The facts of the case are that the father of the petitioner purchased land bearing Survey No.20/P admeasuring 2 acres 07 gunthas situated in the sim of village Sarnal,Taluka Thasra, District Kheda on 19th February, 1961. This sale was oral sale coupled with delivery of possession of the land to the deceased father of the petitioner on the same date. On the basis of the aforesaid oral sale and delivery of possession of the land to the deceased father of the petitioner, mutation entry No.752 was effected on 15-2-1962. The said entry came to be scrutinised by the Aval Karkun on 12-7-1962 and he reported that the transaction and sale appeared to be in contravention of the law. The petitioners alleges that an entry was also made in village form No.7/12 in respect of the said transaction and therein also anendorsement is there that the transaction in question is contrary to law. In pani patrak it is also mentioned that 15 gunthas of the said survey numbers was new kyari land, and thereafter it was shown to be land of new tenure. It is stated to be done only through mistake committed by the person who made the said entry subsequently. However, on consolidation of the land, the land in question has been shown to be old tenure land, and entry has been effected in the village form to that extent. A notice came to be issued to the petitioner by respondent No.2 calling upon to show cause why proceedings under the aforesaid Act should not be taken and penalty of Rs.250/- should not be imposed. This notice is dated 16 th August, 1965. However, the petitioner produced on record another notice dated 10th January, 1966 calling upon the respondent No.2 to pay fine of Rs.200/-. He has further produced receipt for payment of Rs.2,00/-. Thereafter, entry No.844 was effected on 21-11-1966, under order dated 21-11-1966. Under order dated 6/18-9-1984 the Deputy Collector, Anand, held that the sale of the land by oral agreement is not valid. It has further been held that 15 gunthas of the land out of the land is of new tenure. It was

taken to be a case of violation of the provisions of Consolidation of Holdings and Prevention of Fragmentation Act, 1947, and the transaction was declared to be unacceptable under section 9(1). Under section 9(2) penalty of Rs.100/- was imposed on the vendor, and order has been made under section 9(3) for removing unauthorised occupants. The land was ordered to be reverted back to the original owner. This order was taken up by the petitioner by filing appeal before the State Government, which has come to be dismissed under order dated 4th June, 1985. Hence this special civil application before this Court.

3. Learned counsel for the petitioner contended that the authorities below have not considered that the transaction in question had taken place in the year 19161, and the proceedings had been initiated in the year 1984. This delay of about 23 years in initiating the proceedings itself should have been taken to be fatal to the action. It has next been contended that the proceedings under the Act could have been initiated within reasonable time, and this period of 23 years cannot be said to be a reasonable time. The petitioner has been put in possession of the land by the vendor accepting the consideration on 19th February, 1961 and since then he is in possession thereof and cultivating the same. It has further been contended that even if it is taken to be a fact that the land could not have been transferred by oral transaction, then too in view of the fact that when the vendor has accepted the sale consideration and put the petitioner in possession, no order could have been made for declaring the transaction to be illegal as well as the order of eviction of the petitioner. In any circumstance, the order of reverting back the land to the vendor could not have been made. Lastly the counsel for the petitioner contended that even if it is taken to be a case that part of the land was new tenure, then there is no legal obstruction in the way of respondent Vendor to sell the said land to the petitioner, and in that case only permission of the concerned competent authority was required. On the other hand the counsel for the respondent State has supported the orders passed by the authorities.

4. I have given my thoughtful consideration to the submissions made by the counsel for the parties.

5. The vendor has accepted the sale consideration and put the petitioner in possession of the land on 19th February, 1961 is not in dispute. The vendor has not

challenged the said transaction and he has not taken any legal proceedings for declaring it to be illegal, for eviction of the petitioner, and for possession of the land. In the year 1965 the proceedings had been initiated by the respondents, and the respondent No.2 was called upon to show cause why penalty should not be imposed. Penalty has been imposed and that penalty has been paid. Neither the petitioner nor the respondents have produced on record the order, if any, passed. However, the averments made by the petitioner that order has been made by the competent authority for payment of penalty only has not been disputed by the respondents. Be that as it may. The fact is that the respondent Revenue officer has not passed any order for eviction of the petitioner from the land in dispute. No such order has been brought on record of the special civil application. So, despite known of the fact of sale the only action which has been taken by the respondent Revenue Officer is to impose penalty of Rs.200/-. After 1966, for complete 18 years no action whatsoever has been taken. So the petitioner was permitted by all the three authorities, namely, the Mamlatdar, Deputy Collector and the State Government to retain possession for all these years. The petitioner is in possession of the land for more than 36 years by now, and even if it is taken that the sale could not have been effected by oral deed, which has been done in the year 1961, I do not find it to be in the larger interest of justice that at this stage he should be asked to vacate the land and, above all, order for restoration of the land to the vendor. The vendor is not an honest person. He is a dishonest person in case he desires to have restoration of land to him. He had accepted the consideration for sale and delivered possession of the land. This conduct itself is very important and relevant to the controversy in question as the proceedings had been initiated against the petitioner after more than 23 years from the date of sale. Taking into consideration the totality of the facts of this case the impugned orders cannot be allowed to stand.

6. In the result the special civil application is allowed. Both the orders at annexure-H and annexurae-I are quashed and set aside. Rule made absolute. No order as to costs.

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